

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ROCKWELL MINING, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No: 18-1329
NATIONAL LABOR RELATIONS	)	
BOARD,	)	NLRB Case Nos. 09-CA-216001; 09-RC-
	)	202389
Respondent.	)	
	)	
	)	
	)	

**PETITIONER’S STATEMENT OF ISSUES TO BE RAISED**

Petitioner Rockwell Mining, LLC, by undersigned counsel and pursuant to the Court’s December 17, 2018 order, hereby provide this Statement of Issues to be Raised in connection with this petition to set aside Respondent National Labor Relations Board’s (“NLRB”) Decision and Order pursuant to 29 U.S.C. § 160(f), as follows:

1. Whether the NLRB erred in finding that Petitioner violated Section 8(a)(1) and 8(a)(5) of the National Labor Relations Act (“the Act”) by failing and refusing to recognize and bargain with the United Mineworkers of America, AFL-CIO, Region 2, District 12 (the “Union”) as the exclusive bargaining representative of the employees certified as a unit on February 16, 2018 in light of Petitioner’s objections to conduct affecting the results of a union election where the Union promised legal representation benefits conditioned on employees demonstrating pre-petition support for the Union by immediately signing union cards, especially where the election

was held less than 30 days later, due to the NLRB's newly adopted speedy election rules and where the election was so close that a change in one vote may well have had a decisive impact.

2. Whether the NLRB erred in denying review in the underlying representation proceeding with respect to the decision and direction of election, issued on February 16, 2018, which underlies the certification of representatives given Petitioner's substantial evidence that the Union threatened differential treatment to anyone not signing a union card pre-petition; and under these circumstances, where the election result was as close as one vote, whether closer scrutiny was warranted and a re-run election should have been ordered, especially where the pre-petition conduct was not remote in time given the NLRB's newly implemented speedy election rules that greatly reduced the critical period for special scrutiny of pre-election conduct.

3. Whether the NLRB erred in denying review in the underlying representation proceeding with respect to the Employer's objections to conduct affecting the results of the election where reviewing appellate courts have not limited the U.S. Supreme Court's analysis in *Savair Manufacturing Company Co.*, 414 U.S. 270 (1973) to only fee waiver cases as did the NLRB here, when there is substantial evidence that the Union's pre-petition conduct was ominous and threatening; conditioned future legal representation upon employees signing union cards pre-petition; was not remote in time as it occurred within 30 days of the election; was never adequately disavowed by the Union; clearly interfered with employees' Section 7 rights; and the election vote was so close that the change of just one vote would have changed the result of the election.

Dated: January 15, 2019

*/s/ Anna M. Dailey*

*/s/ Forrest H. Roles*

*/s/ Jacqueline N. Rau*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 15, 2019, I caused to be electronically filed the foregoing Petitioner's Statement of Issues to Be Raised with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system. Service was accomplished on all parties using the CM/ECF system.

/s/ Jacqueline N. Rau

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